



**DENISE MERRILL**

SECRETARY OF THE STATE  
CONNECTICUT

**GAE Committee  
Public Hearing Testimony  
January 28, 2013**

Good afternoon, Chairman Musto, Chairman Jutila and members of the committee. For the record my name is Denise Merrill and I am Secretary of the State of Connecticut. I would like to briefly address four bills before the committee this afternoon, and one House Joint Resolution proposed by the governor.

**House Joint Resolution 16 -- Officially entitled a "Resolution Approving An Amendment to the State Constitution to Grant Increased Authority to the General Assembly Regarding Election Administration"**

This is the same resolution that was approved by this committee and approved by a simple majority of the General Assembly last year. Simply put, I would say that this joint resolution is my top election reform priority, and let me briefly explain why. Passage of this resolution by this committee and passage again by the general assembly during the current session would put a constitutional question on the ballot in 2014.

If this question is approved by voters, our constitution would change and allow you as lawmakers to adjust our state election laws to allow for early voting – something more than 30 other states have done and a reform that is long overdue in Connecticut. Now, this constitutional amendment does not specifically prescribe how Connecticut would do early voting. It simply removes restrictive language in our constitution that only permits voting on Election Day save a very narrow set of circumstances in which a voter can use an absentee ballot.

Removing this restrictive language on voting and absentee ballots would allow you as lawmakers to do your jobs and legislate certain election changes. This could include multiple days of voting prior to Election Day, or it could include what are called "No-Excuse" Absentee ballots, where a registered voter would not need to state a reason to obtain an absentee ballot. These election changes could also include mail-in voting, as is done in Oregon and Washington State. Right now, even if this committee felt strongly that you wanted to enact these provisions, you can't do

it without a constitutional amendment to remove the restrictive language I mentioned earlier. So all we want to do is take out the restrictive language and put reforming our elections in the hands of the General Assembly, where it belongs.

Why is this so important? Let me paint a national picture. In the recently held election in 2012, more than 32 million Americans cast their ballots before Election Day. As I said before, more than 30 states have enacted early voting or no excuse absentee ballots. In fact, 32 states have enacted in-person early voting, and 27 states have enacted no-excuse absentee ballots. Many of these states have both options for voters.

In Florida, more than 8,000,000 registered voters cast ballots in the 2012 election. But more than 30% of those – 2.4 million voters – voted early. To take a look at the math for a second, last fall we had just shy of 1.6 million voters cast ballots in Connecticut. So there were 800,000 more voters casting early ballots in Florida than the total number of citizens voting in Connecticut last November 6<sup>th</sup>.

More and more states are recognizing that elections need to provide voters with options that reflect the busy, hectic, and sometimes unpredictable lives of the voters. Planning a day to go the polling place and physically cast a ballot – with more people commuting farther distances – is just simply too complicated a reality for many voters. So the result is that many people who would vote don't vote, and they don't legally qualify for an absentee ballot. Every citizen has a right to vote, and we should be doing everything we can as public officials and election administrators, to ensure that right.

Here in Connecticut, we saw a healthy turnout last November and so much so that we had some pretty long lines at some polling places. If we had more than 30% of all ballots cast in our state prior to Election Day as they did in Florida, you probably would see some shorter lines on Election Day, and potentially an increase in voter turnout as well. So what Governor Malloy and I are asking for in this bill is the opportunity to let voters have a say on whether or not they want you – their elected representatives – to be able to enact early voting.

Another reason why we need more flexible options for voting emerged in the wake of the two devastating storms we had a week before the elections in both 2011 and 2012. In both cases, we had people either stuck in their homes due to trees blocking roads or people displaced to shelters in town and who could not get to their polling place to cast a ballot on Election Day. We got numerous inquiries from local election officials asking if these individuals could vote by absentee ballot, and we had to tell them no.

Legally, those voters were not entitled to use an absentee ballot because technically they were not out of the voting district on Election Day. This is just wrong. A storm should not disenfranchise any voter. This suggests that should this amendment pass, you might want to consider some form of "no-fault absentee ballot", which is an expansion of what we call "non-precinct place voting" – as opposed to early voting, which would involve simply additional days of precinct voting in person.

I want to stress that this constitutional amendment would not by itself enact either early voting or no-fault absentee ballots. Only you could do that. And by placing this on the ballot in the 2014 election, the people of the state will be given the opportunity to approve this measure as well. But this amendment would help move Connecticut elections into the 21<sup>st</sup> century like so many other states have already done.

Making voting more convenient for our busy voters also means more people will probably come out to vote. There are studies that have shown that a combination of Election Day Registration and early voting or no-excuse absentee ballots actually increases voter turnout by as much as 10%, and I am always in favor of increasing voter participation. I urge passage of this amendment.

### **SB 431 "An Act Concerning The Secretary of the State, Proclamations of a Civil Preparedness Emergency and Notice of Legislative Session"**

My office submitted a similar bill last year. This bill stems from the storms that have hit the over the last two years, including a freak snow storm just before the municipal elections in 2011 and Hurricane Sandy, which hit the state and region just before the 2012 election. This bill has three basic parts.

The first gives me as Secretary of the State, when a state of emergency has been declared, the standing to go to Superior Court on behalf of a municipality holding an election to seek a court order postponing, relocating or otherwise adjusting the requirements of election law to ensure the orderly conduct of the election. A number of states have similar provisions, most of them go further, giving the secretary or the governor plenary power to do this without a court appearance. This strikes a balance.

Under current law, a town would have to go to court on its own, while trying to deal with emergency conditions, to seek such relief. Current law also requires aggrievement due to action of an elections official. This bill requires the action be brought in Hartford by the Attorney General. If there were several towns involved, the matter could easily be consolidated by the court. This provides for a fair, efficient proceeding in court for all parties involved.

The second part of this bill updates the law requiring my office to publish executive orders, during a state of emergency, which alter or suspend existing law. Currently law requires publication in various newspapers "printed" and in circulation in the various counties of the state. This bill takes a more common sense approach. It requires my office to post the orders to our website, then publish them in the *Connecticut Law Journal* so that there can be a permanent, paper record kept in libraries throughout the state. Many newspapers statewide could link to these online postings and still get the information out to their readers, and this would cost taxpayers considerably less than printing these executive orders in the newspaper. It literally costs more than \$10,000 for each printing of the executive orders.

Finally, the bill updates the notice provisions to legislators of special sessions of the General Assembly. Under current law, there are circumstances in which the Secretary of the State is required to serve the legislators by state trooper or other authority in hand. In all cases she is

required to serve by first class mail. Again, this is costly, unnecessary, and outdated. This bill provides that my office would give notice of the special session by delivering such written notice to the offices of General Assembly members at the Legislative office building. This common sense bill recognizes that members are alerted to special sessions by their caucus leaders by email and telephone, and provides a more efficient, less costly means to give official notice.

I urge passage.

### **Senate Bill 433 “An Act Concerning A Connecticut Democracy Index”**

Those of you who served with me in the General Assembly know that as chair of the Appropriations committee I have always been a big proponent of Results Based Accountability. And I still am. But – the question comes up – how do you measure the performance of elections against the public resources that are being invested in elections?

Just after I took office two years ago I convened an Election Performance Task Force in 2011 to evaluate our elections system and find areas for improvement. One of our members was Professor Heather Gerken of the Yale Law School. Professor Gerken had written a book that points out that while there are a great deal of assumptions made about elections, there is very little data available.

What kind of data are we talking about? Here are some examples: How long does it take – on average – in every city and town in Connecticut, for a registered voter to cast a ballot on Election Day? Or, are voters generally satisfied with the voting process, or the polling places? Are there enough poll workers? Or, importantly, how much do elections cost under our current system?

There are many other measurable statistics that can inform public policy for how we run elections, and until now no one has done any kind of comprehensive statistical gathering or analysis of that data. This bill is based on a bill Professor Gerken drafted on behalf of members of Congress for a national democracy index. We decided such an index would be extremely valuable at a micro level. Data collected would help policy makers decide what really works and what the areas of concern are.

Professor Gerken pointed out that we live in a data-driven world, but that elections are essentially a world without data. In my humble opinion I think it is always better to be armed with good data when making major public policy decisions – especially related to areas as fundamental to our democracy such as elections. I urge passage of the bill.

### **House Bill 5599 “An Act Concerning Provisional Ballots for State and Municipal Races”**

This proposal has been before the General Assembly now a few times, and is very similar to a bill proposed last year. This bill would allow provisional ballots to be used in state and municipal elections, and I support this concept. Currently, provisional ballots are available in federal elections for voters who are registered but for some reason their name is not on the registry list for their polling place or town. Provisional ballots allow voters whose names are not found on

the voter list – including those voters whose registration status is challenged – to cast ballots on Election Day.

This bill came up last year and I supported then as well. Very simply, we have had the provisional ballot in use for a number of years for federal elections and there have been no incidents of any kind on Election Day which would give us any security or integrity concern. Provisional ballots are counted later, after Election Day – only after it is determined that the voter is legitimately registered. If the voter is not on the registration list the ballots are not counted. So this is an added layer of security for our elections and it gives our registrars of voters another check on someone's registration status.

The bill also eliminates the challenge ballot. Challenge ballots are state ballots used specifically when a voter's registration status is challenged, and that it is only counted when the court orders it. This is unnecessary because a combined state-federal-municipal provisional ballot could serve that function as well, eliminating the need for an additional type of ballot.

This will simplify the voting process, while still preserving any citizen's right to challenge the registration status of a voter they think is attempting to commit fraud. While Election Day Registration taking effect this November will reduce the need for provisional ballots, there may be circumstances where they will still be needed, especially in primaries where Election Day Registration does not apply. I remind you that provisional ballots are currently in use for federal elections, House Bill 5599 would expand that to municipal and state elections. I support passage

### **House Bill 5600 "AN ACT CONCERNING REGISTRARS OF VOTERS"**

This bill has three parts which should improve the administration of elections. The first part mandates that each town provide its Registrar of Voters with access to the Internet and the ability to communicate by email with the Secretary of the State's Office. It is a sad commentary that we even need to legislate this but it is still the case that in 2013 there are still towns in which the Registrars of Voters do not have a hard wired internet connection in town offices.

That is just unfathomable in an era where so many transactions are conducted online – and indeed much information is being transferred to Registrars of Voters from our office via the internet. And starting a year from now, voters will be able to register to vote online so Registrars will need to be able to use email to process those online voter registrations.

This internet access provision should not be confused with the Centralized Voter Registration System (CVRS), which all towns have, provided by the state. CVRS is a closed loop computer network system, so although a Registrar of Voters may have a computer linked to CVRS, this does not mean the Registrar has Internet access. Let me just give you a quick example to illustrate what I am talking about. Last year, as the new redistricting plans were being implemented statewide, our Elections Department got a call from a registrar in a small city. She wanted to understand how to update the centralized voter registration system with the new district lines. Our staff person said, "Let's both get on the redistricting website and I'll walk you through it".

The registrar's response was, "I can't. My office at town hall doesn't have internet access."

We can't effectively administer elections this way. More and more elections functions are moving to Web-based applications. Since we are in a time with shrinking state resources and fewer staff, my office is designing online training modules and convening webinars for local election administrators. We are also moving to online voter registration, and our new election night reporting software is also web-based, so it is essential that all Registrars of Voters have access to the Internet. Email, of course, is the most efficient way for this office to send instructions and advice to Registrars, but some do not have reliable email service in their office.

The second part of the bill clarifies authorities granted to the Secretary of the State under General Statutes 9-3. Under 9-3, the Secretary of the State is the commissioner of elections, and under current law, rulings and instructions from my office are "presumed to be correct," subject to administrative appeal. It follows that if instructions from my office are presumed to be correct, they should be followed uniformly by all elections officials in the state, but that is not the case.

Local elections officials have a solemn duty to ensure that all eligible citizens can register and vote. Voting, of course, is a fundamental right, regardless of where in Connecticut it is exercised. It is vitally important that elections laws be applied equally, fairly and uniformly in all 169 cities and towns. This is not the case, however. For example, there was confusion last year about voter ID rules. In some precincts, local officials required all voters to show a photo ID, even though that is not required by law.

This bill would require local elections officials to follow the rulings and guidance from our office. To ensure accountability, this bill also has an enforcement provision through possible reference to the State Elections Enforcement Commission for election administrators who do not follow guidance from this office. The bill preserves the right of a local to file an administrative appeal if a local official disagrees with a ruling.

The third part of this bill requires the secretary of the State to produce and distribute a poster showing the various forms of acceptable voter identification that can be used on Election Day. This is a good idea, because it is better to have the identification requirements be uniform across the state than the different messages on this important issue that have emerged from local registrars of voters.

Overall, I think this bill will ultimately streamline the administration of elections in Connecticut and cut down on voter confusion during Election Day, and I urge passage.



## DENISE MERRILL CONNECTICUT SECRETARY OF THE STATE

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### FAQ

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## Voter ID

My new driver's license indicates that it is NOT FOR FEDERAL IDENTIFICATION. May I use it as identification at the polling place?

Yes. You may continue to use your current driver's license at the polling place when you vote. When you check-in to vote, in lieu of the driver's license, you may also show a credit card with your name and signature, an ID with your name and photograph, or any document with your name and address such as a checkbook or a utility bill.

Does the photo ID need to have the address printed on it?

No. A photo ID does not need to have your address on it. e.g.- College Student ID, Employee ID or a U.S. Passport.

### IN-PERSON VOTER ID REQUIREMENTS

Two Types of ID Requirements in CT:	
<p><b>A. First time voters who:</b></p> <ul style="list-style-type: none"> <li>a. registered by mail after January 1, 2003, <u>and</u></li> <li>b. are voting for the first time in an primary/election with <i>federal candidates</i> on the ballot <u>and</u></li> <li>c. have a "mark" next to their name on the official registry list:</li> </ul>	<ul style="list-style-type: none"> <li>• <b>All other voters</b> (THIS INCLUDES MOST VOTERS)</li> </ul>
<ul style="list-style-type: none"> <li>• You must present:               <ul style="list-style-type: none"> <li>◦ A copy of a current and valid photo identification that shows your name and address;</li> </ul> </li> <li><u>Or</u></li> <li>◦ A copy of a current utility bill, bank statement, government check, paycheck or government document that shows your name and address;</li> <li><u>Or</u></li> <li>◦ Cast a provisional ballot</li> </ul>	<ul style="list-style-type: none"> <li>• You must present:               <ul style="list-style-type: none"> <li>◦ Your social security card, <u>or</u></li> <li>◦ Any pre-printed form of identification that shows your:                   <ul style="list-style-type: none"> <li>▪ name and address, <u>or</u></li> <li>▪ name and signature, <u>or</u></li> <li>▪ name and photograph</li> </ul> </li> </ul> </li> <li><u>Or</u></li> <li>• Sign a statement under penalty of false statement on Form ED-681 entitled, "Signatures of Electors Who Did Not Present ID", provided by the Secretary of the State that the elector whose name appears on the official check list is the same person who is signing the form.</li> </ul>

# **Provisional/Challenge Ballots Under Current State Law**

## **Provisional Ballots:**

- Used only for federal elections (even numbered years) and primaries.
- Only contain the names of candidates for federal office on the ballot
- Not available for state elections (primaries, special elections), municipal elections, or referenda votes
- Available to voters who:
  - Claim to be registered but whose names do not appear on the voter list
  - Are registered to vote but lack the requisite Voter ID
  - Are successfully challenged (see below) but want to vote in a federal election or primary
- Voters who wish to use the provisional ballot must apply for that ballot and attest that they are a legitimately registered voter eligible to vote in that polling location.
- Provisional ballots are only counted (later on election day or after election day) if the voter is indeed found to be properly registered
- If voter is not registered, provisional ballot does not count

## **Challenge Ballots:**

- Used for All elections (state, federal, municipal, special elections, primaries)
- Available to voters whose names appear on the official voter checklist and whose registration status is challenged by a fellow citizen or poll worker at the voting precinct.
- A challenge against a voter's ability to cast a ballot can only be made if:
  - The residence of the voter is in question
  - The identity of the voter is in question
  - The voter's eligibility is in question due to conviction of a felony
- Only a polling place moderator can determine if the challenge to a voter's eligibility is accepted
- If a moderator decides that the challenge is accepted, the moderator has determined that the voter is not eligible to cast a ballot.
- A challenged voter can request and apply for a challenge ballot, swearing an affidavit that they are qualified to vote at that location.
- Challenge ballots are filled out in the presence of a polling place moderator, the ballots are sealed and not counted in the election unless the results of the election are contested in court.
- Only a court order of a judge can result in challenge ballots being unsealed and counted.



## **Proposed Changes to Provisional/Challenge Ballots**

### **Under HB 5599**

- Would make the provisional ballot useable for all elections (Federal, State, municipal)
- Would eliminate the challenge ballot as a separate ballot
- Would change the provisional ballot to include the names of all candidates on the ballot
- Voters whose eligibility is successfully challenged can apply for a provisional ballot, attesting that they are legitimately registered to vote at that location
- Upon further investigation by the Registrars of Voters following the election, if the voter is found to be legitimately registered and eligible to vote in the polling location where the ballot was cast, the vote will count without a court order